JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~1097~~ 179

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Petitioner,

versus

ESSO SHIPPING COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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HAUSER PRINTING CO., INC., NEW ORLEANS

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ESSO SHIPPING COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Mississippi Valley Barge Line Company (hereinafter referred to simply as "Valley") prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit affirming an interlocutory decree in admiralty of the United States District Court for the Eastern District of Louisiana, decreeing mutual fault with regard to the liability of two colliding vessels.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 240 F. 2d 606, and is printed *infra*, Appendix A, p. 15. The findings of fact and conclusions of law of the District Court have not been officially reported, but will be

found in the Record, p. 277 ff., and are printed *infra*, Appendix B, p. 19.

JURISDICTION

The opinion of the Court of Appeals and judgment of affirmance were filed February 13, 1957. Thereafter petitioner presented to that Court a petition for rehearing, which was denied without further opinion in an order filed on April 2, 1957. Jurisdiction of this Court lies under 28 U.S.C. 1254 (1), Act of June 25, 1948, c. 646, 62 Stat. 928.

QUESTION PRESENTED

This case involves an important question of admiralty law: the application of the so-called "Pennsylvania Rule," derived from Your Honors' opinion in *The Pennsylvania* (1874), 86 U.S. 125, 22 L. Ed. 148, which is now receiving varied interpretations in the different Circuits where it has been invoked, so that in a collision case whether a vessel be exonerated or condemned depends upon the Circuit wherein the libel is filed. In this case the Pennsylvania Rule was applied under the following circumstances:

A collision occurred in the Mississippi River, where it is 1800 feet wide, between the upbound towboat NEW ORLEANS, encumbered with a tow of seventeen barges, and the downbound Tanker QUEMADO LAKE. There can be no dispute as to the facts since they were found by the District Judge and accepted by the Court of Appeals. *McAllister v. United States*, 348 U.S. 19, 75 S. Ct. 6. From these facts it appears that the NEW ORLEANS flotilla found itself in the middle of the river approaching a bend to its right. The QUEMADO LAKE entered the bend

from upstream on its own left-hand side at seventeen (17) miles per hour, crossed the river, always maintaining full speed ahead, steered into the bank on her own right-hand side, sheered out into the middle of the river, and, despite the fact that there was ample room to pass the NEW ORLEANS flotilla on either side, ran into that vessel. Although the NEW ORLEANS gave the QUEMADO LAKE ample room to pass, she was held at fault for crossing slightly the center line of the river. The NEW ORLEANS, however, was in effect a "sitting duck" and could have done nothing to avoid the collision. On the contrary, the QUEMADO LAKE was found guilty of numerous grievous faults and she alone had an opportunity to prevent the collision. Therefore, the question presented is:

Under the circumstances outlined above, does the Pennsylvania Rule dictate or require a finding of mutual fault or is that rule to be applied realistically and reasonably so as to absolve the Towboat NEW ORLEANS?

STATEMENT OF THE CASE

As pointed out above, under *McAllister* there can be no factual dispute in this case. The accepted facts indicate that on the night of June 20, 1952, the Tanker QUEMADO LAKE, downbound in the Mississippi River to sea and proceeding at the inordinately high rate of speed for a vessel in confined inland waters of 17.23 miles per hour over the bottom, ran into the Towboat NEW ORLEANS, upbound with a tow of seventeen barges, proceeding at a speed of 3.3 miles per hour over the bottom. The collision occurred in what was for the towboat flotilla a right-hand bend, where the river is 1800 feet wide. The towboat flotilla, 105 feet wide at

its widest point, was unaware of the approach of the downbound QUEMADO LAKE until the towboat reached a point just about or slightly to its left of the middle of the river, when its pilot first saw the QUEMADO LAKE downbound and favoring its own left hand bank of the river above the point, well on the starboard hand of the towboat flotilla.[1] Apparently at the same instant the pilot of the tanker saw the towboat flotilla, each theretofore having been hidden from the other by the point. On sighting, each vessel blew one blast for a port to port passage, to allow the tanker to come down in the bend on its right-hand side of the river pursuant to a custom on the Mississippi River that upbound vessels come up under the point and downbound vessels run the bend. Upon the exchange of signals, the course of the towboat flotilla was directed for a period of five seconds to its right, and then steadied up. The course of the tanker was directed to its right and it crossed the head of the towboat flotilla 100 yards upstream and then came left, intending to set a course paralleling the shape of the bend and pass down the port side of the towboat flotilla. The QUEMADO LAKE, however, ran too far into the bend and approached too close to its own right-hand bank, by reason of which it smelled the bank and sheered to its left, or it was over-steered to its left so it failed to make good its course down its right-hand bank and ran out into the River and struck the port after quarter of the NEW ORLEANS. From the Record and the findings of fact of the District Court it further appears that from the time that the vessels sighted each other to the time of the collision the towboat flotilla had run just about its own length, 1,000 feet, and the QUEMADO LAKE had run 5,000 feet or more; that from the

[1] See Appendix C, *infra* p. 26, for an aerial chart whereon have been plotted the positions and courses of the vessels after they sighted.

time that the vessels sighted each other the speed of the towboat flotilla was never altered and the QUEMADO LAKE maintained full speed ahead until it smelled the bank in the bend, when its engine was stopped momentarily, but was immediately put full speed ahead when it was found then that the QUEMADO LAKE, stuck in the mud, would not answer its helm, and continued to run full speed ahead until after the QUEMADO LAKE struck the NEW ORLEANS.

On that testimony the District Court entered an interlocutory decree of mutual fault. The Court of Appeals affirmed, accepting unanimously the Trial Court's findings of fact, and the majority accepting the Trial Court's conclusions of law, but with the author of the opinion dissenting from the conclusion that the Towboat NEW ORLEANS was guilty of fault, and asserting that it should be excused under the major-minor fault rule. Thus:

> "We accept the trial court's findings of fact, and the majority concurs in its conclusion that the negligence of neither vessel was wholly sufficient to account for the accident, from which it follows that the damages should be divided; but the writer of this opinion thinks that the major fault of the descending vessel heavily and flagrantly outweighs the error of the towboat, and that justice requires the condemnation completely of the more culpable vessel. *Compania De Maderas, etc., v. The Queenston Heights*, 5 Cir., 220 F. 2d 120."

The faults of the two vessels were stated by the Court of Appeals to be as follows:

> "The lower court held that the QUEMADO LAKE was at fault in (a) proceeding at too high

a rate of speed for a deep draft vessel in restricted waters and endeavoring to pass the NEW ORLEANS flotilla without reducing speed; (b) negligently navigating too close to the right descending bank, which caused the QUEMADO to smell the bank and to take a sheer to its left; or alternatively, oversteering to the left, by reason of which the QUEMADO LAKE did not make good a course down-river parallel with the right descending bank, but ran out toward the center of the river and struck the NEW ORLEANS; (c) not navigating in a manner so as not to embarrass the towboat NEW ORLEANS, which was encumbered with a large and heavy tow, citing *The Mayumba*, D.C., 21 F. 476; *The Rose Culkin*, D.C., 52 F. 328; *The Lucy*, 4 Cir., 74 F. 572; *The Georgetown*, D.C., 135 F. 854; *The Westhall*, D.C., 153 F. 1010; The *Maine*, D.C., 2 F. 2d 605; *cf. Intagliata v. Shipowners & Merchants Towboat Co.*, 26 Cal. 2d 365, 159 P. 2d 1; and (d) continuing to go full speed ahead in the jaws of collision and not going full astern, citing *The New York*, 175 U.S. 187, 20 S. Ct. 67, 44 L. Ed. 126. The NEW ORLEANS flotilla, proceeding upstream at the slow speed of 3.8 M.P.H. as against 17.23 for the QUEMADO LAKE, was held at fault for crossing the center line of the river onto the bend side, the stream being about 1800 feet wide at that point, citing *The Stephen R. Jones*, 5 Cir., 27 F. 2d 298; *The Norne*, 5 Cir., 59 F. 2d 145; *The Pennsylvania*, 19 Wall. 125, 86 U.S. 125, 22 L. Ed. 148."

REASONS FOR GRANTING THE WRIT

The definitive findings and conclusions of the District Court, accepted by the Court of Appeals, foreclose any claim or argument that this collision could have happened or did happen in any manner other than that determined in such findings and conclusions. *McAllister v. United States, supra.* As opposed to what the Court

of Appeals characterized as the "major fault" of the QUEMADO LAKE, the NEW ORLEANS was condemned for one-half of the damages because it had crossed the center line of an 1,800 feet wide river slightly onto the bend side, but without any finding that there was not ample room on the bend side for the QUEMADO LAKE to pass. No other fault was ascribed to the NEW ORLEANS.

Accepting, as we must, that the NEW ORLEANS was at fault for having crossed the center line of the river, it is most important to bear in mind that there was absolutely nothing that it could have done to have avoided a collision once the vessels were in sight—the die had been cast for her. On the other hand, all that the QUEMADO LAKE had to do was to reduce speed, steer properly into the bend and pass the NEW ORLEANS in the ample room available to it. Even after the QUEMADO LAKE failed in these duties, as it obviously did, a collision still would have been averted had not the QUEMADO LAKE, then partially aground in the mud with its engine stopped, put its engine full speed ahead, resulting in sheering or running out into the river and striking the NEW ORLEANS. The QUEMADO LAKE alone had the opportunity to avoid the collision, but she did not take it. Despite this, the majority of this panel of the Court of Appeals felt bound to a strict application of the Pennsylvania Rule.

This rule, if literally applied, is indeed a harsh one, and has frequently been criticized on that ground. The trend of some courts today is to liberalize the application of the rule and to read into it what, we submit, this Court must always have intended: "reasonableness". This important principle of admiralty law has not been

considered by this Court in recent years and the result is that different standards of justice are applied in different Circuits. Exoneration or condemnation of vessels in collision cases now depends upon the composition of the panel of the Circuit Court which hears a collision damage case.

The modern trend is well illustrated by the decision of the United States Court of Appeals for the First Circuit in *Seaboard Tug & Barge, Inc. v. Rederi AB/Disa* (1954) 213 F. 2d 772, where that Court interpreted the Pennsylvania Rule not as a hard and fast rule that requires a vessel guilty of statutory fault to show that it could not by any possibility have contributed to the collision, but on the contrary as a rule that requires that the "reasonable probabilities" that the fault could have contributed to a collision should be considered.

The Fifth Circuit also has recognized this trend. In *Compania De Maderas, etc. v. The Queenston Heights* (1955), 220 F. 2d 120, the United States Court of Appeals for the Fifth Circuit said unequivocally and unreservedly that it was "in accord with the statement of the First Circuit, in *Seaboard Tug & Barge v. Rederi AB/Disa*, 213 F. 2d 772, that the Supreme Court, in *The Pennsylvania*, 19 Wall. 125, 86 U.S. 125, 22 L. Ed. 148, did not intend to establish a hard and fast rule that every vessel guilty of a statutory fault has the burden of establishing that its fault could not by any stretch of the imagination have had any causal relation to the collision, no matter how speculative, improbable, or remote", and again applied the rule of "reasonableness". See also *Koch-Ellis Marine Contractors v. Chemical Barge Lines* (1955) 224 F. 2d 115.

The most recent expression of the Fifth Circuit in

this field is *Wilson v. Oil Transport Company, Inc.* (1957) 242 F. 2d 727. There the Court held that a failure to have a lookout did not place the burden of showing that the dereliction not only did not but could not have contributed to the damage on the offending vessel under the Pennsylvania Rule, but that the issue of negligence should be determined by the test of reasonableness.

Accordingly, we now have presented the incongruous situation of the Fifth Circuit, in contravention of its own jurisprudence as well as that of the First and Second Circuits, instead of relaxing the harsh Pennsylvania Rule, enlarging it by applying it in a case where the sole fault of the vessel condemned was in being in a place in the river other than that decreed by custom, notwithstanding the fact that there was ample room on either side of it for the colliding vessel to pass safely and the further fact that she could not by her own maneuvers extricate herself from the impending collision.

We reiterate that there was nothing that the towboat flotilla could have done to have extricated itself from the impending collision once it and the QUEMADO LAKE had sighted each other. The towboat flotilla was just a "sitting duck". Large and slow, proceeding at a speed of 3.8 miles per hour, it could not move out of the way of the approaching QUEMADO LAKE, which was making a speed of 17.23 miles per hour, almost five times as fast as was the towboat flotilla. While the towboat flotilla was proceeding one length, or about 1,000 feet, the QUEMADO LAKE ran almost 5,000 feet, sheered or was oversteered out into the River and struck the NEW ORLEANS. Such action repeatedly, and seemingly without exception until the case at bar, has resulted in the Federal Courts' condemning the steam-

ship, holding it solely at fault, and exculpating the tug (or towboat) flotilla. Both the District Court and the Fifth Circuit cited this jurisprudence from the Federal appellate and district courts in support of their conclusion that the QUEMADO LAKE was at fault for not navigating in such a manner as not to embarrass the NEW ORLEANS which was encumbered with a heavy tow, but both departed from this jurisprudence by failing to exculpate the NEW ORLEANS.

The landmark case in this field is Your Honors' decision in *The Syracuse* (1870) 9 Wall. 672, 76 U.S. 672, 19 L. Ed. 783. In that case a steamship collided with the Tug SYRACUSE with a heavy ice barge in tow alongside. Your Honors, holding the steamship solely at fault and exonerating the tug and tow, said:

> "A tug with vessels in tow is in a very different condition from one unincumbered. She is not mistress of her motions. She cannot advance, recede or turn either way at discretion. She is bound to consult their safety as well as her own. She must see that what clears her of danger does not put them in peril. For many purposes they may be regarded as a part of herself. They have the benefit of her traction and she the burden of their inertia. The character of the fleet could not be mistaken. The attempt of the steamer, under such circumstances, to pass the other vessels, and in such close proximity to the Syracuse, at a speed of seventeen miles an hour, was gross and wanton recklessness. Before turning her head to the eastward she should have slowed her engine. If the prospect of danger darkened she should have stopped, and, if need be, have reversed it. She had no right thus to hurl herself like a projectile into the midst of the vessels before taking the hazard of the consequences and thus imperiling herself and them with all the lives and prop-

> erty on board. 'The Rule of the Road' gives no warrant for such conduct. The maxim applies, '*Sic utere two ut alienum non laedas.*' The steamer is condemnable alike upon reason and authority. *The New Jersey*, Olcott, 44; *The Rose*, 2 Wm. Rob. 3; Holt's Rule of the Road, 227, 247."

In *The Westhall*,[2] 153 F. 1010, the Court, citing and quoting extensively from *The Syracuse*, condemned a steamship and held it solely at fault for colliding with a tug encumbered with a heavy tow, which was admittedly on the wrong side of the channel, as it is alleged was the NEW ORLEANS. In *The Lucy*,[3] 74 F. 572, *The Georgetown*,[4] 135 F. 854, and *The Maine*,[5] 2 F. 2d 605, the Courts, in each instance citing *The Syracuse* and largely on the authority of that case, condemned steamships for colliding with tugs encumbered with heavy tows and exculpated the tugs.

In *The Mayumba* (five cases),[6] 21 F. 476, without reference to *The Syracuse* the Court condemned a steamship and held it solely at fault for a collision with a tow of some thirty boats attached by hawsers to two tugs, and about 1,800 feet long, holding that the tow could neither stop nor move much out of its course, and that it should have been avoided by the steamship.

In *The Rose-Culkin*,[7] 52 F. 328, the Court, without reference to *The Syracuse*, condemned a sailing vessel, usually the privileged vessel, and held it solely at fault for a collision with a tug encumbered by a tow making two knots speed, again for the reason that the tug and

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[2] D.C. E.D. Va., 1899.
[3] 4 C.C.A., 1896.
[4] D.C. E.D. Va., 1905.
[5] D.C. D.Or., 1924.
[6] D.C. S.D. N.Y., 1884.
[7] D.C. S.D. N.Y., 1892.

tow could not have maneuvered so as to get out of the way of the schooner, which was making some ten knots.

While the two cases last cited do not refer specifically to *The Syracuse*, it is noteworthy that the decision in each case was on the same basis as that on which Your Honors placed *The Syracuse*.

After the case at bar had been argued and while it was being held under submission by the Fifth Circuit, another panel of that Court in a similar case reached a diametrically opposite result less than a month before the Fifth Circuit's decision of the case at bar. In that case, *Crawford v. Indian Towing Company*,[8] 240 F. 2d 308,[9] an unencumbered tug collided with the tow of an encumbered tug in a head-to-head passing situation. The Fifth Circuit, without reference to either *The Syracuse* or the Pennsylvania Rule, held the unencumbered tug solely at fault and exculpated the encumbered tow, on the last clear chance doctrine, citing *The Cornelius Vanderbilt*,[10] 120 F. 2d 766, *The Sanday*,[11] 122 F. 2d 325, and *P. Dougherty Co. v. United States*,[12] 207 F. 2d 626. On application for rehearing in the case at bar, the attention of the Court was called to this contrary decision [13] of another panel, and it was urged to grant a rehearing because of the contrary results reached by two panels of the same Court, but the rehearing was refused without opinion or remark.[14]

Further, as pointed out by the author of the opinion

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[8] Decided January 18, 1957. The case at bar was decided February 13, 1957.

[9] Certiorari denied, May 13, 1957.

[10] 2 C.C.A., 1941.

[11] 2 C.C.A., 1941.

[12] C.A. 3, 1953.

[13] pp. 3, 10 and 11 of appellant's petition for rehearing and brief in support thereof, R. 292 ff.

[14] R., p. 305.

in the Fifth Circuit, who disagreed with the conclusion of the other two members of the panel in holding the NEW ORLEANS liable, obviously, in comparison with the grievous fault of the QUEMADO LAKE, any possible fault of the NEW ORLEANS was so slight as to warrant exculpating the NEW ORLEANS and holding the QUEMADO LAKE solely at fault under the major-minor fault rule, on the authority of the jurisprudence of the Fifth Circuit in *Compania De Maderas, etc. v. The Queenston Heights* (1955), 220 F. 2d 120.

Accordingly, we have here a situation where indisputably the action of the Court of Appeals in failing to exculpate the NEW ORLEANS is contrary to Your Honors' decision in *The Syracuse*, contrary to the jurisprudence of the Federal appellate and district courts which have followed *The Syracuse*, contrary to the Fifth Circuit's own jurisprudence in *Crawford - Indian Towing Company* and of the Second and Third Circuits, whose decisions form the basis on which *Crawford - Indian Towing Company* was decided, and contrary to the Fifth Circuit's own jurisprudence in *Compania De Maderas, etc. v. The Queenston Heights*, relative to the application of the major-minor fault rule.

As stated, the decision of the Fifth Circuit in the case at bar, failing to exculpate the NEW ORLEANS, seemingly marks the sole and only departure from an unbroken line of jurisprudence in the Federal courts which extended from 1870, when Your Honors decided *The Syracuse*, down to the present time.

Accordingly, we submit that ample reason appears for granting a writ of certiorari and for the amendment of the decree of the Fifth Circuit so as to exculpate the NEW ORLEANS.

CONCLUSION

For the reasons set forth above it is respectfully submitted that this petition for a writ of certiorari should be granted and that the decree of the Court of Appeals should be amended, exonerating the Towboat NEW ORLEANS, and, as so amended, the decree should be affirmed.

Respectfully submitted,

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APPENDIX A

OPINION OF THE COURT OF APPEALS

(February 13, 1957)

Before HUTCHESON, Chief Judge, and HOLMES and BORAH, Circuit Judges.

HOLMES, Circuit Judge: This is a suit in admiralty, growing out of a collision on the Mississippi River between ascending and descending vessels, a tanker and a flotilla of barges propelled by a tug. The collision occurred in a bend of the river, and the trial judge found that the descending vessel, in spite of the danger, came on down the river without slackening its speed and, at or before the moment of collision, put its engines into full speed ahead, when it should have put them into reverse. From a holding that both vessels were at fault and that the damages should be divided, both sides have appealed, and the controversy here is waged upon the contention of each side that the other was solely to blame. Into the equation the doctrine of major and minor fault is also introduced.

The accident occurred on the night of June 20th, 1956, and the ascending vessel was the tug New Orleans, which was shoving ahead a tow of 17 barges in five tiers. The overall length of this tow was 872 feet, and its width was 105 feet at the widest point. The combined length of the tow and towboat was 1087 feet. The descending vessel was the Quemado Lake, which was loaded and drawing 30 feet forward and 31 feet 10 inches aft, or a mean draft of 30 feet 11 inches. The hour was about

9:15 P. M. The night was dark, but visibility was otherwise unimpaired by weather factors. Both vessels were properly showing all lights. The Quemado Lake was travelling downstream and averaging 17.23 miles per hour over the bottom. Navigation of the waters wherein this collision occurred is governed by the "Pilot Rules for the Western Rivers and the Red River of the North."

The lower court held that the Quemado Lake was at fault in (a) proceeding at too high a rate of speed for a deep draft vessel in restricted waters and endeavoring to pass the New Orleans flotilla without reducing speed; (b) negligently navigating too close to the right descending bank, which caused the Quemado to smell the bank and to take a sheer to its left or alternatively, oversteering to the left, by reason of which the Quemado Lake did not make good a course down-river parallel with the right descending bank, but ran out toward the center of the river and struck the New Orleans; (c) not navigating in a manner so as not to embarrass the towboat New Orleans, which was encumbered with a large and heavy tow, citing *The Mayumba*, 21 Fed. 476; *The Rose Culkin*, 52 Fed. 328; *The Lucy*, 74 Fed. 572; *The Georgetown*, 135 Fed. 854; *The Westhall*, 153 Fed. 1010; *The Maine*, 2 F. (2) 605; cf. *Intgatiata v. Ship Owners and Master Towboat Company*, 1946 A.M.C. 263; and (d) continuing to go full speed ahead in the jaws of collision and not going full astern, citing *The New York*, 175 U.S. 187, 20 S. Ct. 67. The New Orleans flotilla, proceeding upstream at the slow speed of 3.8 M.P.H. as against 17.23 for the Quemado Lake, was held at fault for crossing the center line of the river onto the bend side, the stream being about 1800 feet wide at that point, citing *The Stephen R. Jones*, 27 F. (2) 208; *The Norne*, 59 F. (2) 145; *The Pennsylvania*, 19 Wall. 125, 86 U.S. 125, 22 L. Ed. 148.

We accept the trial court's findings of fact, and the majority concurs in its conclusion that the negligence of neither vessel was wholly sufficient to account for the accident, from which it follows that the damages should be divided; but the writer of this opinion thinks that the major fault of the descending vessel heavily and flagrantly outweighs the error of the towboat, and that justice requires the condemnation completely of the more culpable vessel. *Compania De Maderas, etc. v. The Queenston Heights*, 220 F. (2) 120, 1955 A.M.C. 797.

Accordingly, the judgment appealed from is affirmed.

AFFIRMED.

APPENDIX B

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT

CHRISTENBERRY, J.

The libel in this action arose out of a collision between the towboat NEW ORLEANS and the SS QUEMADO LAKE, which the libel alleges was caused solely by the fault of the latter vessel. Respondent answered and cross-libelled, admitting the collision, but alleging that it was caused by the sole fault of the towboat NEW ORLEANS.

The case came on for trial on the issue of liability only, and the Court, having considered the pleadings, the evidence adduced, the arguments of counsel, and the law applicable, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

At all times material hereto, Mississippi Valley Barge Line Company was and now is a corporation organized under the laws of the State of Delaware.

II.

At all times material hereto, Esso Shipping Company was and now is a corporation organized under the laws of the State of Delaware.

III.

At all times material hereto, Mississippi Valley Barge Line Company was the owner and operator of the Towboat NEW ORLEANS, a twin screw vessel propelled by two diesel engines of approximately 3600 indicated horsepower, and the engines are pilot house controlled. The vessel is 213 feet in length over-all, 43 feet wide, and its full depth approximately 10 feet. She has two steering rudders located aft of her propellers, used for steering when going ahead, and two backing rudders located forward of her propellers, used for steering when going astern.

IV.

At all times material hereto, Esso Shipping Company was the operator of the QUEMADO LAKE, an American tank steamship, single crew, 526 feet long.

V.

On the night of June 20, 1956, the NEW ORLEANS was shoving ahead a tow of 17 barges in five tiers. The overall length of this tow was 872 feet, and its width was 105 feet at the widest point. The combined length of the towboat and tow was 1087 feet. Captain Roy Clay, an old experienced river pilot, was in charge of her navigation.

VI.

On the same date, the QUEMADO LAKE was loaded and drawing 30 feet forward and 31 feet 10 inches aft, or a mean draft of 30 feet 11 inches. Captain Carlton F. Trosclair, licensed as a Master First Class Pilot on the Mississippi River in the area of the collision, was in charge of the QUEMADO LAKE.

VII.

On the night of June 20, 1956, at about 9:15 P.M. (time shown by the NEW ORLEANS' clock), the NEW ORLEANS was in collision with the QUEMADO LAKE at approximately mile 172.5 a.h.p. (above the head of the passes). The night was dark but visibility was otherwise unimpaired by weather factors. Both vessels were properly showing all lights. The River was about 1800 feet wide at the point of collision.

VIII.

The NEW ORLEANS was proceeding upstream from Crescent Light at Mile 146.8 a.h.p., at an average rate of speed of 3.8 m.p.h. over the bottom. When the NEW ORLEANS and her tow reached Riverton Light at Mile 171.2 a.h.p., on the left descending bank of the River, it was favoring that bank. Captain Clay then laid a course toward the right descending bank of the River, which placed Riverton Light 50 yards on his port stern and Rateau Light, on the right descending bank at Mile 173.0 a.h.p., 50 yards on his port bow, and which if continued to the right descending bank of the River would have brought the head of the NEW ORLEANS flotilla to that bank 50 yards upstream from Rateau Light. He intended to turn to his starboard, after passing the center of the River, and steering upstream past Brangier Point, on the left descending bank of the River. While on this course and approximately midway between Riverton Light and Rateau Light, Captain Clay, for the first time, became aware of the presence of the QUEMADO LAKE, when that vessel, downbound and on the left descending bank of the River above Brangier Point, emerged from behind the Point so as to be visible to a vessel below the Point. At this time the NEW ORLEANS

and her tow were about 500 feet from the right descending bank.

IX.

Earlier, the QUEMADO LAKE had departed Baton Rouge, travelligg downstream, and passed Plaquemine Light at Mile 208.3 a.h.p.; From that light until she reached White Castle Light at Mile 198.4, the vessel was averaging 15.4 m.p.h. over the bottom, and her wheel was turning at 80 to 82 revolutions per minute at full speed ahead. At 7:17 P.M., on orders from the bridge, the wheel was increased to 90 r.p.m., and from White Castle Light to the point of collision she was averaging 17.23 m.p.h. over the bottom. As the vessel passed the Donaldsonville Ferry crossing, a few miles above Brangier Point, her speed was reduced, but it was increased to full speed ahead again as it approached Brangier Point. From Brangier Point on the left descending bank of the River, a course was laid to Rateau Light on the right descending bank of the River in order to follow the channel for deep draft vessels, which course then proceeded downstream on the bend side of the River. As the beam of the vessel was in the center of the River, approaching Rateau Light, the Pilot first noticed the green light on the head of the tow of the NEW ORLEANS. A few seconds later the Pilot noticed the green light on the towboat.

X.

The NEW ORLEANS blew one long whistle, as did the QUEMADO LAKE almost simultaneously, indicating a port to port passing. The distance between the QUEMADO LAKE and the head of the tow at that time was less than one mile. Immediately the NEW ORLEANS

was swung to starboard for about 15 seconds in an attempt to allow ample passing room on her port for the QUEMADO LAKE, and was put back on center or perhaps 5 degrees to port so as to steady up the NEW ORLEANS flotilla. When the NEW ORLEANS turned its tow to starboard the stern of the towboat necessarily "crabbed" to the left in the direction of the right descending bank and the course of the QUEMADO LAKE from Rateau Light. Meanwhile, the QUEMADO LAKE, moving toward Rateau Light, crossed the head of the NEW ORLEANS and her tow 100 yards upriver from it, approached practically into the mud on the right descending bank, which caused her to sheer to the left and toward the center of the River. Furthermore, the vessel was steered to hard left at this time in order to leave the bank. About 30 seconds thereafter, the port side of the QUEMADO LAKE struck the port side of the NEW ORLEANS' stern while the vessels were in the bend side of the River.

XI.

The speed of the NEW ORLEANS was never diminished during the above events. The QUEMADO LAKE was run full ahead at all times, except, when the vessel was in the right descending bank, the engines were stopped but almost immediately put full ahead again because the QUEMADO LAKE would not then answer to her helm.

CONCLUSIONS OF LAW

I.

The subject matter of this litigation, a marine collision, is within the admiralty and maritime jurisdiction of the Court. 28 U.S.C., 1333.

II.

Navigation of the waters wherein this collision occurred is governed by the "Pilot Rules for the Western Rivers and the Red River of the North".

III

The QUEMADO LAKE was at fault in:

(a) proceeding at too high a rate of speed for a deep draft vessel in restricted waters and endeavoring to pass the NEW ORLEANS flotilla without reducing speed;

(b) negligently navigating too close to the right descending bank, which caused the QUEMADO LAKE to smell the bank and to take a sheer to its left or, alternatively, oversteering to the left, by reason of which the QUEMADO LAKE did not make good a course down-river parallel with the right descending bank, but ran out toward the center of the River and struck the NEW ORLEANS;

(c) not navigating in a manner so as not to embarrass the Towboat NEW ORLEANS, which was encumbered with a large and heavy tow. *The Mayumba* (D.C. N.Y. 1884) 21 F. 476, *The Rose Culkin* (D.C. N.Y. 1892) 52 F. 328, *The Lucy* (C.C.A. 4, 1896) 74 F. 572, *The Georgetown* (Va. 1905) 135 F. 854; *The Whitehall* (D.C. Va. 1899) 153 F. 1010, *The Maine* (D.C. Ore. 1924) 2 F. 2d 605; *Cf. Intgatiata vs. Ship Owners and Masters Towboat Company* (Cal. 1955) 1946 A.M.C. 263;

(d) continuing to go full speed ahead in the jaws of collision and not going full astern. *The New York* (1888) 175 U.S. 187, 20 S. Ct. 67.

IV.

There is a custom on the Mississippi River of such long standing as to have the force of law that up-bound

vessels proceed up under the point and down-bound vessels proceed down in the bend. *The Stephen R. Jones* (5 C.C.A.) 27 F. 2d 208; *The Norne* (5 C.C.A.) 59 F. 2d 145. The NEW ORLEANS flotilla violated this rule by crossing the center line of the River onto the bend side, and therefore carries the burden of showing that this violation not only did not but could not have caused the collision. *The Pennsylvania*, 19 Wall. 125, 86 U.S. 125, 22 L. Ed. 148. This burden the NEW ORLEANS has not successfully discharged.

V.

For the reasons above given, I find that this collision occurred through the mutual fault of the tanker QUEMADO LAKE and the steamer NEW ORLEANS, and that the damage resulting therefrom should be divided between them. Interest shall run from the date of the final decree fixing damages.

New Orleans, Louisiana, November 9th, 1956.

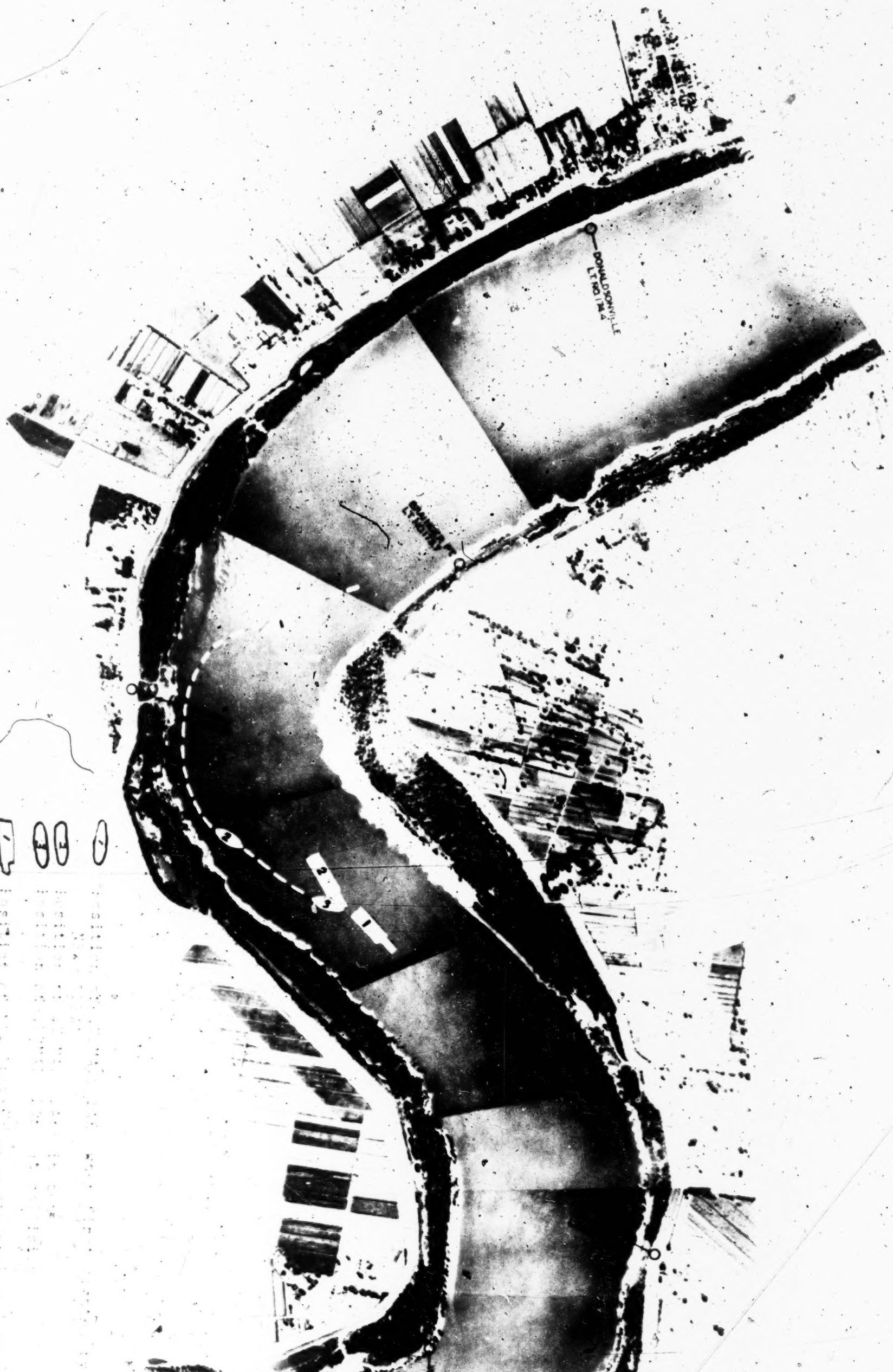
(Sgd.) HERBERT W. CHRISTENBERRY

UNITED STATES DISTRICT JUDGE.

APPENDIX C

CHART
(Photoprint)

For the convenience of the Court and Counsel, the aerial chart of that stretch of the River where this collision occurred, on which have been plotted the positions of the QUEMADO LAKE and the NEW ORLEANS when they first sighted each other and the subsequent course and progress of the QUEMADO LAKE and the towboat flotilla down to the time of the collision, constructed from data taken from the exhibit Clay 2, sent to this Court in the original, is attached inside the back cover.


DONALDSONVILLE
LT HOUSE


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